STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	
Proposal to Implement a Purchase	)	Docket No. 10-0138
Of Receivables with Consolidated	)	
Billing (PORCB) Service	)	
	)	
(Tariffs filed January 20, 2010)	)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S BRIEF ON EXCEPTIONS

JESSICA L. CARDONI
MICHAEL J. LANNON
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle Street, Suite C-800
Chicago, IL 60601

Phone: (312) 793-3305
Fax: (312) 793-1556

Email: jcardoni@icc.illinois.gov
mlannon@icc.illinois.gov

Counsel for the Staff of the Illinois
Commerce Commission

October 22, 2010

Table of Contents

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	
Proposal to Implement a Purchase	)	Docket No. 10-0138
Of Receivables with Consolidated	)	
Billing (PORCB) Service	)	
	)	
(Tariffs filed January 20, 2010)	)	

STAFF BRIEF ON EXCEPTIONS

Pursuant to Section 200.830 of the Illinois Commerce Commission's ("Commission") Rules of Practice, 83 Ill. Adm. Code 200.830, Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, respectfully submits this Brief on Exceptions ("BOE") to the Administrative Law Judge's Proposed Order ("Proposed Order") issued on October 7, 2010. Staff addresses issues to which it takes exception in the order in which they appear in the Proposed Order, utilizing the headings found in the Proposed Order for organizational purposes.

I. Introduction

Staff commends the Administrative Law Judge ("ALJ") for the thorough, cogently-reasoned analysis contained in the Proposed Order. The Proposed Order also generally provides an accurate and detailed summary of the positions of the parties and reaches conclusions with respect to all issues that are consistent with applicable requirements under the Illinois Public Utilities Act.

Staff, nonetheless, has a number of recommended edits to the Proposed Order in the form of replacement language. Most of Staff's proposed replacement language is tied to exceptions. However, Staff also offers replacement language in instances where Staff agrees with the Proposed Order's conclusion but offers the language for clarification purposes. Despite the "non-exception" nature of these clarifications, Staff labels them "exceptions." Staff also is providing the attached (Staff BOE, Att. A) redlined Proposed Order for the convenience of the Administrative Law Judge, which contains a few edits that are ministerial in nature in an endeavor to correct what appeared to Staff to be inadvertent typographical errors. Staff BOE Att. A does not contain any of the replacement language found below, as it is intended to merely be an administrative aid.

II. Staff Exceptions

Staff Exception No. 1

V. A. Switching Rule (Rules Regarding Rescission by a Customer) Revisions

Staff generally agrees with the conclusions with respect to this issue but it recommends certain clarifying revisions to both the summarization of Staff's position as well as the Analysis and Conclusions section.

Specifically, Staff recommends that the Order be modified to clarify the most important aspect of Staff's position, which is that the issue in this proceeding is not about rescission periods, although deciding the rescission period must necessarily come first. (Staff IB, at 13.) The issue is about changes to ComEd's switching rules; specifically, the length of the enrollment window. (ComEd IB, at 37.) ComEd proposes to lengthen its enrollment window for customers that want to take service from an ARES or to go back to utility supply service after having received service from an ARES. ComEd proposes to lengthen this enrollment window to 18 calendar days because several parties, including Staff, proposed a lengthened rescission period for residential and small commercial customers in the Code Part 412 rulemaking.

However, the Commission cannot make an informed decision on the question of whether this proposed 18-calendar day enrollment window is appropriate for a potentially longer rescission period until it decides the proper rescission period for residential and small commercial customers. Staff argued, and no party disagreed, that the proper venue for the Commission to decide a new rescission period for residential and small commercial customers is the rulemaking proceeding for new Code Part 412. (Staff IB, at 35-37.) Thus, the Commission will not be able to make an informed decision on whether ComEd's proposed 18-calendar enrollment window is appropriate until it issues the new Code Part 412.

Staff initially recommended rejecting ComEd's proposed switching rule revisions precisely because those revisions are intended to implement a possible change in the Commission's administrative rules. (*Id*.) ComEd, however, argued that if it was to start offering the new PORCB tariff service by December 1, 2010, the new 18-calendar day enrollment window had to be implemented concurrently. (ComEd Ex. 3.0, at 26.) Given that ComEd has delayed the expected "go live" date for operations under Rider PORCB several times in the past and the currently effective "go live" date is already 14 months after the effective date of the AIU's UCB/POR tariff, Staff wanted to avoid another delay in the implementation of Rider PORCB.

Staff, consequently, stated that it will not recommend rejecting the tariff provisions in question if the Commission makes certain declarations in the Order in this proceeding. ComEd agreed with Staff's requested declarations and found them to be reasonable. (ComEd Ex. 6.0, at 21.) Similarly, CUB did not object to Staff's requested clarifications. (CUB IB, at 8.) Staff's requested clarifications, upon which it conditioned its recommendation to approve ComEd's proposed changes to its Switching Rules, were provided in Staff's Initial Brief and are as follows.

> First, the Commission should make it clear that it is not determining a new rescission period for residential and small commercial customers when approving these tariff revisions. The Commission should recognize that there is a distinction between the extended enrollment period described in ComEd's proposed tariff revisions and the rescission period contemplated in the Code Part 412 rulemaking. The latter addresses issues between a RES and the retail customer (primarily the issue of early termination fees), while the former does not. In other words, in the event the Commission adopts ComEd's proposed tariff revisions related to its switching rules, no party will be able to (credibly) claim in the Code Part 412 rulemaking that the Commission has already decided an issue that is at issue in the rulemaking.
>
> Second, the Commission should emphasize in the Order in this proceeding that it will not make any determination as to whether any new rescission period (or other potential additional obligations) will apply to non-residential customers using more than 15,000 kWh annually. In other words, approving these proposed tariff revisions will not prejudge the issue of what constitutes an appropriate definition of a "small commercial customer" as it being contested in the Code Part 412 rulemaking.

(Staff IB, at 38-39.)

In order to incorporate Staff's first requested clarification into the Commission's Order, Staff respectfully requests the following changes to Section V. A. Staff recommends that the second clarification quoted above be incorporated into Section V.B. of the Order and this is addressed below. Also, in order to reduce the potential confusion between the right of rescission and ComEd's proposed changes to its Switching Rules, Staff recommends that the header of Section V.A. be modified to simply read "Switching Rule Revisions." In addition, the section describing Staff's position should eliminate any reference to a "Rescission Rule" and instead use the term "Switching Rule." As a result, Staff recommends that its position on page 7 of the Order should read as follows:

> **A. Switching Rule (Rules Regarding Rescission by a Customer) Revisions**
>
> **Staff's Position**
>
> Staff originally contested the propriety of ComEd's proposed changes to its "~~Rescission~~Switching Rules" which is, loosely defined, the ~~time period in~~process by which~~,~~ the ultimate consumer gets~~ could change his mind about~~ switch~~ing~~ed to, or from, a retail electric supplier's supply service. However, ComEd presented evidence indicating that, if it revised the tariff language, ComEd would also have to revise its computer system, which would effectively delay the time, at which, ComEd's PORCB could "go live" (commence operations). Staff does not desire to delay the program's "go live" date. And, because Staff does not wish to delay implementation of ComEd's program, Staff withdrew its objection to ComEd's "~~Rescission~~Switching Rule." (Staff Pretrial Memo at 12-13), conditioned on the two following clarifications being made in the Commission's Order.
>
> Staff contends that this Commission should not decide to impose any change upon ComEd, in this docket, with regard to its "~~Rescission~~Switching Rule." This issue, Staff continues, is being litigated

in the rulemaking proceeding regarding Part 412. [1] Staff states that this Commission should make it clear that it is not deciding upon a new rescission period for residential and small commercial customers when approving the tariffs here. There is a distinction, Staff adds, between the extended enrollment period described in ComEd's proposed tariff revisions and the rescission period contemplated in the Code Part 412 rulemaking, as, Part 412 addresses issues between a retail electric supplier and a retail customer, which are, primarily, the issue of early termination fees, while ComEd's proposed tariffs do not. (Staff Posttrial Brief at 38).

Staff also contends that this Commission should emphasize in the Order here that it will not make any determination as to whether any new rescission period (or other potential additional obligations) will apply to non-residential customers using more than 15,000 kilowatt hours annually. (Staff Posttrial Brief at 13).

Similarly, Staff recommends that the Analysis and Conclusions section on page 10 of the Order be modified to clearly distinguish between rescission periods (which is at issue in the Code Part 412 rulemaking) and enrollment periods (which is at issue here). In addition, Staff proposes to strike a sentence that could possibly be construed to be in conflict with the Commission's finding that ComEd is not authorized to extend its go live date beyond December 1, 2010. Thus, Staff recommends that this section should read as follows:

Analysis and Conclusions

Staff's and RESA's concerns are reasonable and they are duly noted. Nothing in this Order should be construed in a manner that would conflict with, or override, Commission regulations. When the rulemaking for Part 412 in docket No. 09-0592 comes to an end, Part 412 will govern the applicable areas. <u>The Commission is not determining a new</u>

[1] The part 412 rulemaking Docket, *Illinois Commerce Commission, on its own Motion, Adoption of 83 Ill. Adm. Code 412 and Amendment of 83 Ill. Adm. Code 453,* Docket no. 09-0592, concerns promulgation of regulations pursuant to the amendments to Section 16-118 of the Public Utilities Act that are germane here. (*See, e.g.,* docket 09-0592, Staff Initial Brief, filed on August 27, 2010, at 1-2).

rescission period for residential and small commercial customers when approving these tariff revisions. We recognize that there is a distinction between the extended enrollment period described in ComEd's proposed tariff revisions and the rescission period contemplated in the Code Part 412 rulemaking. The latter addresses issues between a RES and the retail customer (primarily the issue of early termination fees), while the former does not. Further, in this proceeding we are not making any determination regarding whether any new rescission period (or other potential additional obligations) will apply to non-residential customers who use more than 15,000 kilowatt hours on an annual basis.

As RESA points out, due to the statutory timing (one year from the date, upon which, the First Notice Order issued) regarding conclusion of the Part 412 Rulemaking docket, and, the conclusion of this docket, there is little need for any temporary adjudication regarding the "rescission" period and related tariff language. There appears to be little or no gap between the termination date for the docket at bar and the termination date for the Part 412 Rulemaking. Therefore, ComEd's proposed ~~10-day~~ 18 calendar day ~~rescission period~~enrollment window is adopted herein, but, it is adopted only as a temporary stop-gap until such time when Part 412 is in effect. At that time, Part 412 will govern the effective rescission period and any potential modifications to the approved enrollment window in the instant tariffs.

However, RESA's concerns about the lack of a firm "go live" date are duly noted. ~~We make no determination here as to whether ComEd should be allowed to extend its "go live" date beyond December 1, 2010, except to note that, as a result of this docket, there is no need to do so.~~ In that vein, here, we are not authorizing ComEd to extend its "go live" date beyond December 1, 2010. ComEd has stated, here, essentially, that changing the rescission period involves complicated IT changes, which will push that date back for approximately four months. No evidence has been presented to indicate that this is incorrect. It is with this evidence, and the potential for a conflict with a Commission rule, (Part 412) that this Commission concludes that no change to ComEd's tariffs is warranted at this time. We note that the Part 412 rulemaking has been in litigation for quite some time;[2] it is therefore possible that, in that proceeding, ComEd has been on notice for several months, due to the litigation in that proceeding regarding this issue, that it may have to change its IT programming and related matters.

[2] This Commission takes Official Notice of the fact that the Part 412 Rulemaking docket, docket no. 09-0592, initiated in December of 2009, with a First Notice Order, which contained a definition of the rescission period.

We make no determination as to the notice that ComEd received in another docketed proceeding, except to note that the ruling here is with limited evidence regarding what amount of notice that ComEd had regarding the IT changes that would be necessary to implement a change in the ~~rescission period~~enrollment window. Additionally, any conclusion here is based solely on the limited facts presented here; it cannot serve as precedent in the Part 412 Rulemaking proceeding, regarding when the "go live" date can occur. In that proceeding, there may be different facts regarding the amount of time that ComEd personnel knew, or, should have known, that there would be, or could be, a change in the rescission period, thus necessitating the massive IT changes that ComEd alleges are necessary for such a change.

The Definition in Rates BES, BESH, RDS and MSPS of "Mass-Market Customers"

As described above, Staff recommends that the Analysis and Conclusions section should be clarified that the Commission is not deciding on a definition of "small commercial customer" in this proceeding. In addition, the language should make it clearer that this issue is resolved in the same manner as issue V.A. above it. Specifically, Staff proposes that the Proposed Order's statement that "the applicable tariffs will remain as they are in their current form" could be interpreted to mean that ComEd's proposed new Switching Rules are being rejected. However, given the rest of the language in that section, that does not appear to Staff to be the intent of the Proposed Order on this issue.

Accordingly, Staff recommends the following revisions to the Analysis and Conclusions section:

Analysis and Conclusions

As was the situation regarding the ~~rescission~~enrollment period issue, with regard to the issue here, we see no reason to adjudicate, in this proceeding, a matter that is being litigated in the Part 412 rulemaking docket. Therefore, we decline to do so. We are not making any determination as to whether any new rescission period (or other potential additional obligations) will apply to non-residential customers using more than 15,000 kWh annually. Hence, approving these proposed tariff revisions will not prejudge the issue of what constitutes an appropriate definition of a "small commercial customer" as it being contested in the Code Part 412 rulemaking. We specifically note that here, the applicable tariffs will remain as they are ~~in their current form~~proposed by ComEd, but, temporarily, until the time when Part 412 is adopted by this Commission in Docket no. 09-0592. At that time, ComEd shall comply with whatever is required of it in that docket pursuant to the rule (Part 412) that is promulgated pursuant to that docket.

Staff Exception No. 2

F. The Cost Recovery Mechanism-Whether to Impose a Fixed $0.50 Per-Bill Charge, or a Percentage, on Alternative Electric Suppliers.

In two instances of the Analysis and Conclusions section, the Proposed Order uses the term "subsidy" when referring to PORCB charges for low-use customers and high-use customers. Staff is concerned that the term subsidy might not be the best term to use in this context. For instance, generally speaking, a subsidy occurs when one class of customers pays a price (or rate) that is below the actual cost of providing the good or service while another class of customers pays a rate that is above the cost of providing the service. In this instance, no party is arguing that any particular class of customers (or a specific set of retail electric suppliers) would be getting charged a rate that does not recover its actual cost. In fact, ComEd has stated that the costs to provide PORCB service do not vary with the amount of receivables purchased (ComEd Ex. 6.0, at 7) and ComEd did not deny the premise that the PORCB costs are largely fixed one-time costs, primarily driven by the desired functionalities of the service, rather than the number of bills issued or the amount of receivables purchased. However, while the term subsidy, in Staff's opinion, is not an ideal term to describe the inequities resulting from ComEd's proposed fifty-cents-fits-all approach, it is still true that RESs with a large number of low-use customers would pay a proportionally higher charge than RESs with a large number of high-use non-residential customers under ComEd's proposal. Staff's proposed modifications to the Analysis and Conclusions section below would make this fact clear.

The Proposed Order finds that it would be beneficial to combine the uncollectible rates for residential and non-residential customers into a single uncollectibles portion of the discount rate. Staff does not oppose this finding, having stated in testimony that it finds ComEd's approach "neither right nor wrong" and that the Commission adopted a combined uncollectibles factor in the case of Ameren's UCB/POR tariff investigation. (Staff Ex. 1.0, at 8.) Staff, however, is concerned regarding two items contained in the Proposed Order's calculation of the combined uncollectibles portion of the discount rate. First, the Proposed Order appears to use 1.215% as the non-residential uncollectible rate, when in fact that percentage is 0.774%. (Staff Ex. 1.0, at 8.) Second, the Order uses the simple average of the residential and non-residential uncollectible portions, which is not something Staff is able to recommend. A better approach, and an approach used by the Commission when it adopted a combined uncollectibles portion in the Ameren UCB/POR tariff investigation, would be to use a weighted average of the two rates, using the respective revenues as weight. However, the relevant revenue figures that led to the uncollectible factors found in ComEd's Rider UF are not part of this record. Therefore, Staff recommends that the ALJ issue a post-record data request to ComEd to obtain this information. Staff recommends instructing ComEd to provide the relevant information in a format similar to what was used in the Ameren tariff investigation. In order to clarify the request to ComEd, the Exhibit 1.2 in Docket No. 08-0619/0620/0621 (filed on December 22, 2008) should be provided to ComEd as part of the data request.

Accordingly, Staff respectfully recommends that the following modifications be made to the Analysis and Conclusions section of the Proposed Order:

Analysis and Conclusions

The Legislative Intent

* * *

According to ComEd's witness Mr. Garcia, ComEd currently serves approximately 3.7 million residential customers that are eligible for POR and UCB services. (Tr. 29). However, ComEd only serves a number that is less than 300,000 non-residential customers that are eligible for these services. (*Id*.). These estimates are some indicia that, with ComEd's proposal, retail electric suppliers would have a much easier time gaining profit, if they merely marketed to the higher-end commercial users, leaving lower-end users without the benefit of competition. Yet, there are no indicia that this was the intent of the General Assembly. In fact, the intent stated in the applicable law (above) is quite the contrary; it envisions that all Illinoisans should have the benefit of competition. If retail electric suppliers passed on ComEd's proffered $0.50 per-bill charge to their customers in the manner in which ComEd bills them, effectively, lower-end (in usage) PORCB customers would ~~subsidize~~pay a proportionally higher charge than the higher-end users. No party has proffered anything to indicate that this was the intent of the General Assembly. In fact, the statement of legislative intent indicates the opposite, which is, that all Illinoisans should benefit from the services of retail electric suppliers. All Illinoisans, necessarily, includes those persons or entities that do not use much electricity. Therefore, we conclude that ComEd's proffered $0.50 cent, per-bill, fixed charge is not in accord with the General Assembly's articulated purpose, which is stated in 220 ILCS 5/16-118(a), and is stated above.

* * *

Arguments Regarding Discrimination

*　　*　　*

> We note that there has been no showing here that, if larger-use customers receive a higher PORCB bill, they will not, nevertheless, receive a lower bill with PORCB services. Therefore, any argument that larger-use customers using POCB services will suffer, if a percentage charge is imposed, is without merit. Additionally, since there are so many residential customers that could take PORCB services, as opposed to commercial customers, it also may be possible that lower-use customers may make up through the volume of customers what they lack in actual usage per customer. While ComEd contends that its costs per bill are constant, high-use customers use a greater amount of retail electric supplier service. However, it is the policy of this State to reduce overall energy consumption. (220 ILCS 5/8-103). The ~~subsidy~~cost recovery method proposed by ComEd and by various retail electric suppliers does not further this policy.

Staff Exception No. 3

Whether to "Socialize" the Cost of PORCB Services

Staff agrees with the Proposed Order's conclusion on this issue. However, Staff views the pronouncement that there will be no "direct benefit received by consumers from competition" (Proposed Order at 26) as somewhat troubling, particularly given the General Assembly's and the Commission's history of enabling and supporting wholesale and retail competition. (See e.g., Section 20-102 of the Act). Likewise, in Staff's view, this record does not contain evidence to conclude that ComEd's Rider EDA and Rider AMP have provided direct benefits to all customers through reduced demand and/or reduced prices of energy. Fortunately, the issue at hand does not require the Commission to make broad findings as to whether every customer benefits from ComEd's energy efficiency and Smart Meter programs. Instead, the conclusion to not socialize PORCB costs should be based on the fact that the statute allows PORCB costs to be recovered from retail electric suppliers, whereas the statutes concerning Rider EDA and Rider AMP do not. For these reasons, Staff respectfully recommends that the Analysis and Conclusions section be modified as follows:

Analysis and Conclusions

We are not persuaded by Dominion's argument on this point. Dominion cited the cost recovery mechanisms for energy efficiency programs and ComEd's experimental advanced metering program. Energy efficiency and advanced metering programs are not analogous to the situation here. This is true because these programs ~~either directly reduce energy consumption or teach people how to reduce their energy consumption. Reduced energy consumption benefits all consumers because it reduces the demand for energy, which reduces the price of energy. (*See,* 220 ILCS 5/8-103)~~<u>do not arise from a statute that explicitly provides for the recovery of costs from retail electric suppliers.</u> ~~While competition in the electric supply area may benefit all consumers, there is no evidence here that there will be any direct benefit received by consumers from competition.~~ We decline to "socialize" PORCB costs.

Staff Exception No. 4

V. J. Whether to Impose Cut-Off Dates for Start-Up Costs and Implementation Costs

Staff recommends certain revisions to the language found on pp. 28 – 29 of the ALJPO in order to more accurately summarize Staff's position. Staff recommends the following revisions:

Staff's Position

Start-Up Costs

Staff asserts that rider recovery of capital investments for development or other initiation-type (start-up) costs that ComEd incurs after December 31, 2011, would not be for the development, modification or implementation of the PORCB program. Instead, those expenses would be further enhancements. Staff seeks, therefore, to impose a cut-off date of December 31, 2011 for capitalization of these start-up costs. Staff contends that such a "cut-off" date is important in order to differentiate between initial implementation costs, referred to as "reasonable start-up costs" in Section 16-118(c), and ComEd's ongoing administrative costs. Staff states that its proposed cut-off date of December 31, 2011, is more than 4 years after the effective date of the enabling statute. (Staff Posttrial Brief at 44). It further states that ComEd has been incurring IT-related PORCB costs since 2008. (Staff Reply Brief at 13).

<u>The Company claims that it would not be able to recover costs associated with a potential "rate ready" PORCB service.</u> Staff states that adopting the December 31, 2011 cut-off date will not make it impossible to recover these costs. Instead, according to Staff, the cut-off date will require a separate tariff revision <u>for that potential service only when it becomes a reality</u>. (*Id.* at 48). In Staff's view, costs incurred after December 31, 2011, would not be for the development, modification or implementation of the program. These costs would be, however, further enhancements that could be required for reasons that are unrelated to the initiation of this program. As such, they would be treated like any other system modification cost, which would not be part of the PORCB recovery. (*See,* Staff Posttrial Brief at 58). In other words, these expenses would be recovered from all ratepayers in ComEd's next rate case <u>as routine operating costs</u>, and not through its PORCB-related riders, even though the ratepayers that do not take PORCB-related services will be paying for those services.

In its Reply Brief, Staff states that the type of expenses that are at issue here, fixing software bugs, and general post-production support, will be necessary expenditures. However, this type of cost would be more in the nature of ongoing operating expenses, rather than capitalized costs to be recovered over ten years. Staff notes that its proposal is based upon the same proposal that was approved in the Ameren UCB/POR proceeding, docket no. 08-0619. (Staff Reply Brief at 13).

Implementation Costs

Staff additionally contends that imposing a cut-off date upon implementation costs is important, as, it serves to differentiate between initial implementation costs and ongoing administrative costs. Staff proposes to impose a cut-off date for these costs of December 31, 2011, which, Staff states, is more than four years after the effective date of the enabling statute. (Staff Posttrial Brief at 44-46).

Staff also recommends that the conclusion requires certain clarifying language concerning a cut-off date for start-up and implementation costs. The final paragraph in the conclusion of this section agrees with Staff's position that it is logical that ComEd will not be incurring start-up costs beyond the cut-off date proposed by Staff. In addition, the PO's conclusion regarding a final true up of costs after ten years (Section L. of the Proposed Order) also implies that costs for start-up and implementation will be completed by December 31, 2011 in order for there to be a "final" ten year true-up. Since Staff does not see any meaningful distinction between "start-up" and "implementation" costs, it recommends that the last two sentences in the conclusion be stricken. Accordingly, Staff recommends making the following revisions to the conclusion section of this issue in the PO:

Analysis and Conclusions

With regard to POR services, the enabling statute provides, in pertinent part, that:

> The tariff filed pursuant to this subsection (c) shall permit the electric utility to recover from retail customers any uncollected receivables that may arise as a result of the purchase of receivables under this subsection (c), may also include other just and reasonable terms and conditions, and shall provide for the prudently incurred costs associated with the provision of this service pursuant to this subsection (c).

(220 ILCS 5/16-118(c). Concerning UCB services, this statute provides that:

> The tariff filed pursuant to this subsection (d) . . . shall provide for the recovery of prudently incurred costs associated with the provision of service pursuant to this subsection (d). The costs associated with the provision of service pursuant to this Section shall be subject to periodic Commission review.

(220 ILCS 5/16-118(d). It therefore appears that the General Assembly intended to have all POR or UCB costs to be recovered through the tariffs that ComEd has filed in this proceeding, subject to a prudence review. Stated another way, the language above is indicia that the General Assembly intended to have POR and UCB costs segregated from the costs that would be included in rates. We conclude, therefore, that the

cut-off dates that Staff seeks to impose do not ~~further~~ conflict with the General Assembly's intent, and, therefore, they are ~~rejected~~ accepted.

In so ruling, we acknowledge that the pertinent statutory language was enacted four years ago, and, ComEd alleges that it has incurred start-up costs for this program since 2008. It is logical that ComEd should not be incurring start-up costs beyond the date posed by Staff. ~~We therefore require ComEd to clearly delineate what costs are start-up costs. Also, ComEd should clearly delineate what costs are implementation costs.~~

Staff Exception No. 5

K. Deferred Costs

Staff recommends certain revisions be made to the language on pages 30-31 of the ALJPO to more accurately summarize Staff's position. Staff recommends the following revisions:

Staff's Position

Staff contends that the deferral of expenses related to DICs (Developmental and Implementation Costs) was raised, for the first time, in ComEd's surrebuttal testimony, ComEd Ex. 3.5, Corr., on July 21, 2010. Before this time, Staff understood that the DICs ~~Developmental and Implementation costs~~ and the BSMICs (Billing Systems Modification and Implementation Costs) to be capital investments and the AOCs (the Administrative and Operational Costs) and, the BSAOCs (the Billing Systems Administrative Operational Costs) to be operating and maintenance expenses. (Staff Posttrial Brief at 55-56).

Staff's concern, as is articulated in its Brief, is that before ComEd filed ComEd Ex. 3.5 Corr., there was no indication that ComEd intended to defer these expenses. In surrebuttal testimony, ComEd witness Mr. Garcia stated that ComEd's participation in workshops related to the issue here resulted in the expenditure of costs on the part of ComEd. (See, ComEd Ex. 7.0 at 6; Staff Posttrial Brief at 55-57). Staff's issue is ~~does~~ not ~~appear to be~~ with the expenditures asserted; rather, it is with the legal sufficiency of the information that ComEd provided, in discovery, to support ComEd's treatment of these costs as deferred expenses versus capitalized costs providing benefits for the future PORCB Program ~~need to make these expenditures~~. Staff further states that, generally, this Commission does not allow costs to be deferred, unless, those costs have been approved by this Commission in advance. In support, it states that, in similar rider ride recovery situations, (annual coal tar rider

> reconciliations) this Commission has not allowed costs that are not approved in advance, for deferral into future recovery from ratepayers. (*See,* Staff Posttrial Brief at 57-58).
>
> Staff's states, in its Reply Brief, that its questioning of ComEd's PORCB costs is not one that seeks to pre-approve (or deny) these costs, in advance of any prudency review. Rather, Staff continues, in the past, this Commission has questioned whether ComEd has requested and received approval to defer costs in a manner that is at variance from accounting rules that are consistent with the proper accounting treatment for certain costs. Staff reiterates that the PORCB-related costs that ComEd has already incurred are costs that would be capitalized. (Staff Reply Brief at 18-19).[3]

Staff also recommends that the conclusion on the deferral of costs issue should provide a more direct decision regarding the issue of deferred costs. While Staff understands the approval of specific costs is not at issue (and cannot be decided since no support for specific costs was provided by ComEd), the category of "deferred costs" is an issue that can be resolved here. The Company gave no indication until the night before Staff filed its rebuttal testimony that a category called deferred costs was even at issue. The information provided in Surrebuttal testimony was of such a general nature and so late in the discovery process that it was of little use to anyone in understanding what was included.[4] Staff did provide an alternative solution that if the expenses provide benefits for the future PORCB Program, they could be capitalized as part of the Program rather than deferred.[5] ComEd did not respond to Staff's alternative.

---

[3] This paragraph appears on page 35 of the PO in the discussion of Staff's position on Cost Estimates. Since the section referenced appears in the Staff Reply Brief under the Deferred Costs section, Staff believes it was erroneously placed in the PO. See discussion below under Section O. Cost Estimates.

[4] Staff IB, p. 56.

[5] *Id.*, p. 57.

In addition, the first paragraph under Section O. Cost Estimates in the PO appears to be misplaced since it discusses deferred costs. That paragraph should be moved to the conclusion on Deferred Costs.

Accordingly, Staff recommends that the conclusion on page 31 of the PO regarding the Deferred Costs issue should be revised as follows:

Analysis and Conclusions

We acknowledge, at the outset, that the propriety of these costs is not the subject of this docket. However, if ComEd is attempting to defer matters that are not usually deferred, it ~~may need to~~ should seek the appropriate approval in advance consistent with prior Commission practice ~~of any reconciliation proceeding~~. While ~~Therefore~~, we decline to come to any conclusion as to the recoverability of specific costs ~~on this issue~~ at this time, we recognize ComEd's reluctance to provide support for costs actually incurred to date. ~~We urge ComEd to adhere to basic accounting principles in the future.~~ Given that the category of "deferred costs" was included in the types of costs to be recovered too late in the discovery process to be fully vetted, such a category of costs will not be allowed for recovery under the proposed recovery mechanism.

In this proceeding, this Commission is *not* approving any costs. Here, in this docket, we are only approving the recovery mechanism for prudently-incurred costs. We further agree with Staff that the substantial increase in cost estimates on the part of ComEd is troubling, due to the fact that these costs have not been substantiated. We note that while the Commission is not approving any expenditure, ComEd witnesses have stated, more than once, that ComEd has made expenditures during the past two years that are for its PORCB program. ComEd has provided no reason to indicate that its expenditures cannot be substantiated. However, Staff's concern, articulated in its Reply Brief, which is, essentially, that ComEd may need to request and receive approval to defer costs in a manner that is at variance from accounting rules, is a valid one. Therefore, while we are not requiring ComEd to furnish documentation at this time, we urge ComEd to consult with Staff regarding the proper accounting procedures/variances from those procedures involved for the PORCB program after the completion of this docket.

Staff Exception No. 6

M. Staff's Objections to Certain Tariff Language

Staff recommends that the conclusion regarding certain tariff language should adopt Staff's proposal so that there will be consistency between the AIU and ComEd tariff language for recovery of the exact same cost components. To do otherwise would provide unfair advantage and potential conflicting decisions during the reconciliation proceedings for the utilities. Staff's proposal repeated the language and rationale for the language that was presented and approved in the AIU UCB/POR proceedings. To now approve language that can be interpreted differently for the ComEd tariffs unnecessarily invites controversy in future reconciliations. Staff correctly referred to treatment of land acquisition costs as they are allowed for recovery in environmental riders as an example of disparate treatment creating unnecessary controversy.[6]

Consequently, Staff recommends that the following revisions be made to the PO's conclusion on page 33:

Analysis and Conclusions

We <u>dis</u>agree with ComEd that Staff's proposal could ~~unnecessarily~~ limit ComEd's recovery to staffing, unnecessarily. <u>We note the problems that are created when disparate treatment among utilities is approved by this Commission. ComEd has not shown that the language approved for the AIU will result in non-recovery of appropriate costs by ComEd.</u> Therefore, we ~~decline to~~ adopt Staff's proposal on this issue.

[6] Staff Ex. 7.0, pp. 3-4.

Staff Exception No. 7

N. Including the Phrase "But Not Limited To" in the Definition of Recoverable Costs

For many of the same reasons noted in Exception No. 6, Staff again recommends consistency between the AIU and ComEd tariff language for recovery of the exact same cost components. The inclusion of the phrase "but not limited to" was considered and rejected by the Commission in the AIU cases considering tariff language for UCB/POR. Again, Staff points out that no utility should be given an advantage over another through different definitions used in the mechanisms to recover identical costs. Therefore, Staff recommends making the following revisions to the PO's conclusion on page 34:

> **Analysis and Conclusions**
>
> We ~~dis~~agree with Staff on this issue. While, ComEd should be allowed to recover any prudently-incurred cost that it incurs in furtherance of the PORCB program, the categories of costs as proposed by Staff and as already approved in the AIU proceedings for recovery of POR related costs will allow for that recovery~~. As is often the case, it may not be able to specifically determine, with in advance, what those costs are. Moreover, because these costs will be subject to a prudence review, defining these costs in a narrow manner could preclude meaningful review of costs that are allegedly within a certain category, but which, really are not prudently-incurred. The better approach, for ComEd, retail electric suppliers, and, the general public, is to keep definitions of the costs that ComEd can recover general, with the caveat that it must prove the need for those costs in any prudence review.~~ Therefore, we ~~decline to~~ adopt Staff's revisions to ComEd's tariffs regarding this issue.

Staff Exception No. 8

O. Cost Estimates

The last paragraph under the subheading for Staff's Position appears to Staff to be inadvertently misplaced in the PO. The referenced citation is to the section in Staff's Reply Brief discussing Deferred Costs. Thus, Staff recommends that this paragraph be removed from the discussion on Cost Estimates and placed in the discussion of Deferred Costs.

Staff's Position

* * *

> Staff recommends two alternatives to solving the problem of unverified cost estimates. The Commission could limit the amounts to be included in the CB Adjustment for the first calendar year to the amount of ComEd's initial cost estimates, but, allowing more time for analysis after costs have been more "firmed up." Staff points out that ComEd has already agreed to Staff's proposal that ComEd evaluate the CB Adjustment rate in effect for the First Application Period when ComEd files the first annual report as provided for in PORCB, Original Sheet 399. (*See,* ComEd Ex. 8.0 at 6). Alternatively, the Commission could require ComEd to provide workpapers, including third-party invoices supporting the costs included in the CB Adjustment, no later than February 1, 2011. While ComEd has rejected that proposal, its proposal "that the allocation of these costs be determined much earlier in a docketed proceeding" falls short, Staff avers, because the Final Order in the rate case will not be issued until several months after Staff's proposed review would be complete. (Staff Posttrial Brief at 52-63).
>
> ~~Staff's states, in its Reply Brief, that its questioning of ComEd's PORCB costs is not one that seeks to pre-approve (or deny) these costs, in advance of any prudency review. Rather, Staff continues, in the past, this Commission has questioned whether ComEd has requested and received approval to defer costs in a manner that is at variance from accounting rules that are consistent with the proper accounting treatment for certain costs. Staff reiterates that the PORCB-related costs that ComEd has already incurred are costs that would be capitalized. (Staff Reply Brief at 18-19).~~

Staff also recommends certain revisions to the conclusion on the issue of Cost Estimates in order to: (1) remove language addressing deferred costs; and (2) remove any ambiguity regarding the timing of and the showing that needs to be made in order to recover costs over the original estimates.

The first paragraph in the conclusion discusses the process to request a variance to defer expenses. It appears that this paragraph was misplaced and should therefore be stricken here and moved to the conclusion in Section K. Deferred Costs.

While the conclusion limiting the amount to be used in the calculation for the CB Adjustment rate appears to adopt Staff's recommendation, it extends the period of time for that amount to be reflected in the rate beyond what Staff recommended. Staff proposed that ComEd evaluate the CB Adjustment rate in effect for the First Application Period when ComEd files the first annual report at the end of the first calendar year, as provided for in PORCB, Original Sheet 399. At that time, if the cost estimates indicate an increase to the CB Adjustment rate is warranted, ComEd can file for new rates, and provide support to substantiate the change. The PO concludes that the original estimate be used during the entire First Application Period which extends for 3 years. If the conclusion does in fact adopt Staff's recommendation, the following revisions should be made to the conclusion on page 36 of the PO:

Analysis and Conclusions

~~In this proceeding, this Commission is *not* approving any costs. Here, in this docket, we are only approving the recovery mechanism for prudently-incurred costs. We further agree with Staff that the substantial increase in cost estimates on the part of ComEd is troubling, due to the fact that these costs have not been substantiated. We note that while the Commission is not approving any expenditure, ComEd witnesses have stated, more than once, that ComEd has made expenditures during the past two years that are for its PORCB program. ComEd has provided no reason to indicate that its expenditures cannot be substantiated. However, Staff's concern, articulated in its Reply Brief, which is, essentially, that ComEd may need to request and receive approval to~~

~~defer costs in a manner that is at variance from accounting rules, is a valid one. Therefore, while we are not requiring ComEd to furnish documentation at this time, we urge ComEd to consult with Staff regarding the proper accounting procedures/variances from those procedures involved for the PORCB program after the completion of this docket.~~

While ComEd vigorously objects to Staff's requests for verification of its cost estimates, there is nothing unusual in Staff's requests for assurances that ComEd's cost estimates were valid. We note that ComEd's $0.50 cost recovery mechanism proposal, and, the percentage proposal that Staff recommended as a cost recovery mechanism, were based upon the original estimate of costs made by ComEd. Yet, the (approximately) 40% cost increase was made for the first time in rebuttal testimony. Since ComEd has not substantiated the veracity of its (approximately) 40% cost increase, it should be limited to recover the amount, upon which, the parties in this proceeding based their proposals. We therefore adopt Staff's recommendation to limit ComEd's CB Adjustment rate for the First Application Period to the amount that ComEd originally proposed, which is $12,596,214~~. After the First Application period, ComEd may file a new tariff reflecting its new cost estimates.~~ ComEd should evaluate the CB Adjustment rate in effect for the First Application Period when ComEd files the first annual report at the end of the first calendar year, as provided for in PORCB, Original Sheet 399. At that time, if the cost estimates indicate an increase to the CB Adjustment rate is warranted, ComEd can file for new rates, and provide support to substantiate the change. ComEd is encouraged to provide the documentation to support any increased cost estimates to Staff in advance of the annual report in order to allow sufficient time for analysis and evaluation of the estimates.

III. Conclusion

For the reasons set forth herein, Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

JESSICA L. CARDONI

MICHAEL J. LANNON

Office of General Counsel

Illinois Commerce Commission

160 N. LaSalle Street, Suite C-800
Chicago, IL 60601

Phone: (312) 793-3305
Fax: (312) 793-1556

Email: jcardoni@icc.illinois.gov
mlannon@icc.illinois.gov

Counsel for the Staff of the Illinois
Commerce Commission

October 22, 2010